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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 314

GRETCHEN McRAE, *Petitioner*

v.

TIGHE E. WOODS, ACTING HOUSING EXPEDITER

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court's order denying the several motions of the petitioner (R. 90) is not reported. The opinion of the Court of Appeals (R. 104) is reported at 196 F. 2d 496.

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1952 (R. 106). On June 2, 1952,

a petition for rehearing was denied (R. 117). The petition for a writ of certiorari was filed on September 2, 1952.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below erred in sustaining the district court's order of June 29, 1951, refusing to disturb its final judgment entered on September 9, 1947, from which judgment no appeal was ever taken.

STATUTE INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, are set forth in the Appendix, *infra*, pp. 11-13.

STATEMENT

Petitioner is the owner of two apartments in Colorado Springs, Colorado, which, at all times here involved, were subject to the provisions of the Emergency Price Control Act of 1942, as amended.[2] (R. 36). A complaint against petitioner was filed on April 28, 1945, by the then Price Administrator under the Emergency Price Control Act, alleging that petitioner had violated the Rent Regulation for Housing issued pursuant to

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[1] August 31 fell on a Sunday, and September 1 was a legal holiday. See *Union National Bank* v. *Lamb*, 337 U. S. 38, 40-41.

[2] 56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664; 50 U. S. C. (1946 ed.) App. 901 *et seq.*

said Act, 8 F. R. 7322 (hereinafter referred to as the "Rent Regulations") by demanding and receiving rents to the extent of $66.00 in excess of the maximum rent established by orders of the Area Rent Director entered in November 1944 pursuant to the Rent Regulations (R. 2, 9, 44, 46). The complaint prayed for an injunction against future violations and for a judgment of $198.00 as statutory treble damages (R. 2).

Petitioner urged as a defense that since the apartments had been occupied by more than two persons, the rent received was lawful under her registration, which had stated an extra charge of $1.00 per day for each additional occupant over two (R. 4-5). The district court sustained this defense and on August 28, 1945 dismissed the action (R. 22). Upon appeal, the district court's judgment was reversed, the Court of Appeals holding that the legal effect of the Area Rent Director's orders were all inclusive, and that such orders established the maximum rents that could be charged "regardless of the number of occupants" (*Porter* v. *McRae*, 155 F. 2d 213, 215 (C. A. 10).

Upon remand,[3] the district court denied injunctive relief, but granted summary judgment for

[3] Following such remand, Frank R. Creedon, successor to the prior Housing Expediter, was substituted as plaintiff. After the resignation from office of Frank R. Creedon, Tighe E. Woods, his successor in office, was substituted as plaintiff by order entered April 30, 1948 (R. 25).

$132.00 which represented damages in double the amount of the overcharges. Petitioner thereafter moved for leave to file a complaint in the Emergency Court of Appeals under Section 204(e)(1) of the 1942 Act (*infra*, pp. 12-13). The trial court denied the motion and petitioner appealed. The Court of Appeals reversed, holding that the violations were neither wilful nor the result of failure to take practicable precautions, and that the judgment appealed from should be "modified to the amount of the overcharges." The Court of Appeals further held that since petitioner had followed a mistaken conception of the procedural devices available "to fully test and adjudicate the reasonableness and validity" of the orders fixing the maximum rent, it was error to deny her petition to proceed in the Emergency Court of Appeals. See *McRae* v. *Creedon*, 162 F. 2d 989 (C.A. 10).

Following receipt of the mandate of the Court of Appeals, the district court on September 9, 1947, entered final judgment against the petitioner for $66.00 "single damages", the amount of the rent overcharges (R. 98). No appeal was taken from this judgment. On September 25, 1947, the district court denied a motion to set aside this judgment and granted petitioner leave to appeal to the Emergency Court of Appeals under Section 204(e)(1) of the Emergency Price Control Act of 1942, *infra*, pp. 12-13 (R. 100). On January 21,

1948, the Emergency Court of Appeals dismissed petitioner's complaint on the ground that it had not been timely filed (*McRae* v. *Woods,* 165 F. 2d 790, certiorari denied April 26, 1948, 333 U.S. 882, rehearing denied May 24, 1948, 334 U.S. 830).

On August 23, 1948, petitioner filed in the district court a "Petition" to set aside "Confiscatory Rent Orders," in which it was alleged that the orders of the Rent Director entered in 1944 were "invalid and void" on various grounds (R. 36-56). On October 20, 1948, petitioner filed a further pleading entitled "Motion to Dismiss" (R. 68). By order of July 28, 1950, the trial court denied said petition and motion (R. 80), holding that the contentions advanced were "precluded by statute" or had been concluded against petitioner in the prior decisions rendered by the Courts of Appeals in *Porter* v. *McRae; McRae* v. *Creedon,* and *McRae* v. *Woods, supra,* as well as the prior judgment of the district court of September 9, 1947 (R. 80-81, 98).

Thereafter between September 29, 1950 and January 23, 1951, petitioner filed further pleadings to review previous rulings of the trial court and the taxation of costs (R. 82, 84, 86). On June 29, 1951, the trial court entered the order here involved denying these motions (R. 90). Upon appeal from this order the Court of Appeals affirmed, holding that the pleadings of petitioner and the contentions therein urged raised only

issues which had been presented, tried, and finally decided against petitioner in the prior litigation, and that the trial court had correctly decided that the pleadings presented no new issues (R. 104).

ARGUMENT

At the outset, it is clear that this case presents no question warranting the granting of a writ of certiorari. In substance, petitioner sought in the courts below, and seeks here, to have set aside a money judgment amounting to $66.00 entered against her by the district court on September 9, 1947. Petitioner's principal ground for seeking the relief is that the rent orders involving her property issued by the Area Rent Director pursuant to the Emergency Price Control Act were invalid (Pet. 1, 5, 7, 8, 10).[4] But it is well established by the decisions of this Court that the district courts have no jurisdiction to pass upon the validity of orders and regulations under the Emergency Price Control Act, jurisdiction to decide those issues being vested exclusively in the Emergency Court of Appeals, subject only to review by this Court. Section 204(d) and (e)(1), Emergency Price Control Act of 1942, *infra*, pp.

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[4] Petitioner's intimations (Pet. 5, 9) that the substitution of respondent as Housing Expediter in the place of his predecessor, Frank R. Creedon, was untimely and in violation of Rule 25(d), F.R.C.P., are without substance. Respondent Woods was appointed on November 1, 1947 (12 F.R. 7265). The order of substitution was entered on April 30, 1948 (R. 25), which was within the six-month period provided for in Rule 25(d).

11-13; *Yakus* v. *United States,* 321 U.S. 414; *Bowles* v. *Willingham,* 321 U.S. 503; *Woods* v. *Stone,* 333 U.S. 472.

In this case, petitioner obtained permission to file a complaint in the Emergency Court of Appeals for the purpose of testing the validity of the rent orders involved. However, her complaint was dismissed by that court because it was not filed within the 30-day period provided by Section 204(e)(1) of the Price Control Act, *infra,* pp. 12-13. *McRae* v. *Woods,* 165 F. 2d 790, certiorari denied, 333 U.S. 882, rehearing denied, 334 U.S. 830. Thus, petitioner did not avail herself of the opportunity provided by the statute to have the validity of the rent orders determined by the only court having jurisdiction to do so. In any event, the district court had no jurisdiction to pass upon the validity of the rent orders, and the decision of the court below sustaining its refusal to set the judgment aside was plainly required by the above-cited decisions of this Court holding that district courts have no jurisdiction to determine the validity of orders and regulations issued under the Price Control Act.

Apart from the above, the district court lacked jurisdiction generally to set aside the judgment of September 9, 1947, throughout the period between September 29, 1950, and January 23, 1951, during which the pleadings which the district court dismissed were filed by petitioner. These pleadings

were, of course, the only ones considered by the district court and the court below in this proceeding.

Petitioner took no appeal from the judgment of September 9, 1947; nor did she take an appeal from the district court's order of September 25, 1947, refusing to set that judgment aside (R. 98, 100). Subsequent to September 25, 1947, petitioner, with the district court's permission, filed a complaint in the Emergency Court of Appeals, which was dismissed as having been filed out of time. Manifestly, the judgment of September 9, 1947 became final for all purposes after the complaint filed by petitioner in the Emergency Court of Appeals was finally disposed of by this Court on May 24, 1948 (*McRae* v. *Woods*, 165 F. 2d 790, certiorari denied, 333 U.S. 882; rehearing denied, 334 U.S. 830), and no appeal was taken after the judgment became final for all purposes, or from the district court's order of July 28, 1950, again refusing to set the judgment aside. Consequently, the district court had no jurisdiction to grant the relief sought during the period between September 29, 1950, and January 23, 1951, since the time provided by 28 U.S.C. 2107 for taking an appeal to the court of appeals had then expired, and the

ten day period provided by Rule 59(b), F. R. C. P., for filing a motion for a new trial had likewise expired, which ten day period, under Rule 6(b) of those Rules, may not be enlarged. For these reasons, also, it is plain that the court below committed no error in affirming the order of the district court refusing to set aside the judgment.[5]

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[5] Since the time for taking an appeal from the September 9, 1947, judgment had expired when petitioner moved on September 29, 1950, and thereafter, to have the judgment set aside, the court below might well have dismissed the appeal on the ground that the district court's order of June 29, 1951, declining to grant the relief sought was not an appealable order. *Brockett* v. *Brockett*, 2 How. 238; *McMicken* v. *Perin*, 18 How. 507, 511. See also *Tubman* v. *Baltimore & Ohio Railroad*, 190 U.S. 38.

CONCLUSION

The decision of the court below is clearly correct. There is no conflict of decisions, and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted,

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NOVEMBER, 1952.

APPENDIX

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664, 50 U.S.C. App. (1946 ed.), 901 *et seq.*), provided as follows:

> Sec. 204(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U.S.C., 1934 edition, Title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall

have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule or to restrain or enjoin the enforcement of any such provision.

Sec. 204(e)(1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 of this Act or section 37 of the Criminal Code, involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is

made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203(a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. * * *

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